

IN THE MATTER OF THE FACT FINDING BETWEEN

JOHNSON COUNTY,

Public Employer,

and

PUBLIC PROFESSIONAL &
MAINTENANCE EMPLOYEES
IUPAT LOCAL #2003,

Employee Organization.

FACT FINDER'S
RECOMMENDATION

John L. Sandy, Esquire
Fact Finder

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PUBLIC EMPLOYMENT
RELATIONS BOARD

APPEARANCES: JOHNSON COUNTY
Judy Perkins

UNION
Joseph Rasmussen

I. FACTS

This proceeding arises pursuant to the provisions of the Iowa Public Employment Relations Act, Chapter 20, Iowa Code. Johnson County (hereinafter referred to as "County") and the Public Professional & Maintenance Employees IUPAT Local #2003 (hereinafter referred to as "Union or Employees") have been unable to agree upon the terms of their collective bargaining agreement for the 2005-06 contract. The parties met several times to resolve their conflicts including Mediation which was conducted on December 20, 2004. The party's efforts at resolving their disputes were unsuccessful and the parties selected the undersigned fact finder to "make written findings of fact and recommendations for the resolution of the dispute" in accordance with the Section 21 of the Act.

A hearing was conducted in Iowa City, Iowa on January 26, 2005 and was completed the same day. The hearing commenced at 1:00 p.m. and was concluded at approximately 5:30 p.m.

The parties had submitted their final proposal which initially contained five (5) items for fact finding.

Present for the hearing were: Judy Perkins, Lora Schramek, Gayle Svatos, David Wagner and

Steve Dolezal for the County, for the Union, Joseph Rasmussen, Daniel Snow, Patricia Gotto, Brad Fisher, Mark Prentice and Matthew Hendricks.

During the hearing, all parties were provided a full opportunity to present evidence and argument in support of their respective positions. The hearing was tape recorded in accordance with the regulations of the Board. Upon conclusion of the presentation of the evidence, the record was closed and the case was deemed under submission. The parties stipulated that ability to pay was not relevant to this matter.

II. BACKGROUND

Johnson County is located in east central Iowa. According to the most recent census; Johnson County is the 5th largest county in the State with a population of 115, 548.

Iowa City is the County Seat and is also the home of the University of Iowa. The University is one of the largest employers in the County. Johnson County enjoys the distinction in our State of a county which has enjoyed strong economic growth. Increasing population; increasing property valuation; and an extremely low unemployment rate support this contention. The cultural and social aspects of the University have also made Johnson County, a county which will continue to pull a employment pool into it's boundaries.

Also, in 1998 a Mega Mall known as Coralridge Mall was constructed in Coralville, Iowa, a neighboring community to Iowa City.

The County's workforce is represented by 6 collective bargaining units as well as a non bargaining unit segment.

Although ever fluctuating, the County employs approximately 460 employees. Approximately 62 to 65 employees are covered by the collective bargaining agreement at impasse.

III. HISTORY

This collective bargaining unit was first formed in 1997 and the first year of the agreement was for the 1998-99 fiscal year. Originally, the unit comprised nine (9) different full time Job classifications and one part-time classification.

Since inception, one classification has become extinct in that its membership is now considered management.

The initial wage schedule was by job classification as well as longevity. A current schematic is evidenced by Unions Exhibit #107. A fair characterization of the past negotiations would be that settlements have not been amicably resolved by the parties themselves.

Fact Finding and Arbitration was required for their first collective bargaining agreement. Similarly contracts for 1999-2000 and 2003-2004 required both Fact-Finding and Arbitration. The current contract expiring June 30, 2005 necessitated fact finding prior to resolution.

IV. LAW

Iowa Code Section 20.21 provides in pertinent part:

If the impasse persists ten days after the mediator has been appointed, the board shall appoint a fact-finder representative of the public, from a list of qualified persons maintained by the board. The fact-finder shall conduct a hearing, may administer oaths, and may request the board to issue subpoenas. The fact-finder shall make written findings of facts and recommendations for resolution of the dispute and, not later than fifteen days from the day of appointment, shall serve such findings on the public employer and the certified employee organization.

Iowa Code Section 20.22(9) provides: The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

- a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
- b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to the factors peculiar to the area and the classifications involved.
- c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
- d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

It is mandated that all issues set forth above are reviewed in light of the foregoing factors. Iowa State Education Association v. Public Employment Relations Board.

The weight to be given to each of these factors is placed in the discretion of the arbitrator. Moravia Community School District v. Moravia Education Association.

V. IMPASSE ITEMS

Item #1-SICK LEAVE

Article 7, Sick Leave

1) 7.01 Rate of accrual; procedure; exclusions, paragraph A

Employer's position:

INSERT after second sentence:

Effective January 1, 2006, sick leave accrues for full-time employees at the rate of fifteen (15) days per year on a per pay period basis, to a maximum of one hundred twenty (120) days.

Union's position:

Current contract language.

Employees, including probationary employees, accrue sick leave with pay for absences due to illness or injury unrelated to work. Sick leave accrues for full-time employees at the rate of eighteen (18) days per year on a per pay period basis, to a maximum of one hundred twenty (120) days. For accounting purposes, the time frame of days converted into hours will reflect the normal paid leave accrual rate for each employee. Sick leave accrues for part-time employees pursuant to Section 1.02. The minimum increment for use of sick leave is fifteen (15) minutes.

2) 7.08 Records

Employer's position:

CHANGE section to read:

The Sheriff's Department shall maintain accurate records of employee's sick leave accrual and use. ~~Fiscal~~ Calendar year-to-date sick leave use and accumulation balance shall appear on the employee's paychecks. ~~Or on a separate slip indicated in one paycheck of each month.~~

Union's position:

Current contract language.

Item #2-VACATION

Article 11, Vacation

Employer's position:

CHANGE item B to read:

B. Employees regularly scheduled in excess of a standard 40-hour week:

During the first through the fourth years of employment:

2 weeks (10 working days/85 hours) per year

During the fifth through the ninth years of employment:

3 weeks (15 working days/127.5 hours) per year

During the tenth through the nineteenth years of employment:

4 weeks (20 working days/170 hours) per year

During the twentieth or later years of employment:

5 weeks (25 working days/212.5 hours) per year

Union's position:

Current contract language.

B. Employees regularly scheduled in excess of a standard 40-hour week:

During the first through the fourth years of employment:

2 weeks (11 working days/93.5 hours) per year

During the fifth through the ninth years of employment:

3 weeks (16.5 working days/140.25 hours) per year

During the tenth through the nineteenth years of employment:

4 weeks (22 working days/187 hours) per year

During the twentieth or later years of employment:

5 weeks (27.5 working days/233.75 hours) per year

Item #3-INSURANCE

Article 12, Insurance

12.01 Health Insurance

Employer's position:

CHANGE section to read:

All employees who select county health care benefit plan shall be enrolled in a policy equal to that in effect on January 1, 2003 (Wellmark Blue Cross/Blue Shield Alliance Select Preferred Provider Organization) subject to the plan booklet details and exceptions, and the following minimum benefits for a calendar year period. Such coverage includes chiropractic services. Contribution share rates for full time benefit eligible

employees electing single coverage is \$5.00 per month and family coverage (includes same gender domestic partner) is \$12.50 per month effective July 1, 2005.

Union's position:

Current contract language. *No employee contribution on health care.*

Item #4-SHIFT DIFFERENTIAL

Article 13, Job Classification and Compensation

13.10 Shift Differential Pay

Employer's position:

Increase shift differential pay to \$.15/hour

Union's position:

Increase in Section 13.10, Shift Differential Pay, the amount of 10 cents to 40 cents.

Item #5-WAGES

1) Article 13, Job Classification and Compensation

13.02 Wage Rates, item A.

Employer's position:

Change paragraph A to reflect:

Two and a half percent (2.5%) increase effective July 1, 2005.

Union's position:

Change paragraph A of section 13.02, Wage Rates, to read:

Effective July 1, 2005, employees shall receive the hourly amount indicated in Appendix A for their job classification and seniority, plus any longevity pay for which they are eligible. The amounts in Appendix B, January 1, 2005 shall be increased five percent (5.0%).

2) Article 12, Insurance

Employer's position:

No new benefit for annuity-current contract language.

Union's position:

Add a new Section 12.07 entitled Annuity to read:

Any employee who does not enroll in the County's family health insurance coverage shall receive a payment equal to any monthly contribution by bargaining unit employees for family coverage toward a tax-sheltered annuity provided by the Employer. All employees are required to enroll for single health insurance coverage.

VI. COMPARABILITY GROUPS

The parties have jointly stipulated to the Counties each has used for analysis throughout this fact-finding. These counties are: Linn, Scott, Black Hawk, Dubuque and Clinton. All possess a population in the top ten in the state and are located in the eastern 1/3 of the state. Johnson County's population is ranked 5th highest in the State. All, possess college's or universities within their boundaries.

VII. DISCUSSION

Item# 1- Sick Leave; Rate of Accrual; Procedure; Exclusion, Paragraph A and Records

a. Analysis

County urges two modifications to the current years contract controlling **Article 7 Sick Leave**. Aside from updating the dates of the contract; County desires to reduce the number of sick leave days an employee can accrue over the course of their year of employment (7.01) and change the maintenance of records from a fiscal to a calendar year basis (7.08).

Union has rejected both of these modifications and urges that current language should be continued as operative for the 2005-2006 contract.

Historically, the contract has provided for 18 days of sick leave accrued per year.

County asserted that this period of time was what the practice and procedure had been when there was no certified collective bargaining unit.

The Union asserted that this period of time was originally negotiated for as a benefit in the 1998 contract and has consistently been maintained.

It isn't contested that this period of time was the standard sick leave accrual as reflected by the County's Handbook/Personnel Policy.

The parties comparability analysis reflect a minor conflict. Whether Scott County provides 12 or 13 days per year. A summary is as follows:

Black Hawk	15
Clinton	18
Dubuque	25
Linn	12
Scott	12 or 13
<hr/>	
Average	16.4 or 16.6

County contends that the number of days in and of themselves is not the only reason that this downward modification is warranted. They point to the Long Term Disability, Family Sick Leave, Conversions to Vacation or upon retirement and the Co-Worker Fund benefits support their contentions. Exhibit 2 reflects these various benefits as compared to it's counterparts.

The Union counters that not only has this benefit been fought for and preserved through the years, that to give away this benefit outside of the give and take of the negotiation table is unwarranted. That the other beneficial components of it's contract are irrelevant to this specific item.

County urges that they have brought this issue to the table for three (3) years and therefore has established a bargaining history on this issue. They also point to their contracts negotiated with two (2) other certified bargaining units within the County who did agree to this downward modification. That nonparity would increase the bookkeeping expense to the County.

Union has broken down this benefit in economic terms.

The second facet of the County's proposed modification results in changing to a calendar year accounting basis from a fiscal year analysis.

County asserts that this is merely a bookkeeping transition. Union's apparent resistance to this transformation relates to a past fact finding award in which ordered that required the County to issue payroll after the hours of work were actually performed. To make this switch, one week of employment wages were then delayed. A conflict arose as to immediate compensation. The County proposed a limited manner of exchange while the fact-finder apparently expanded that list.

It is unclear to the undersigned how this past conflict directly relates to the current proposed modification other than mistrust.

b. Conclusion

Historically, Johnson County's employees forged this benefit. Years of non-negotiated benefit packages included this item. It appears from a comparability analysis that unlike many portions of Johnson County's contract the employees do not enjoy the maximum number of days of vacation accrual per year as compared to their counterparts. No contention was raised that employees abuse this practice.

Other benefits to compliment this benefit may in fact be non comparable as to other counties but not the number of days.

The fact is Johnson County's 18 days of sick leave each year surpasses the comparability group's average by a day and one half.

Compelling evidence was not presented warranting this modification requested by County.

This like all other benefits have a financial value to the parties and should be purchased and sold if at all at the bargaining table by those best suited negotiate the same.

Conversely, the no good reason exists not to transform the accounting from a fiscal to calendar year.

c. Fact Finding Recommendations:

1. That no modification to Section 7.01 is warranted.
2. That Section 7.08 Records should be modified to read:

"The Sheriff's Department shall maintain accurate records of employees sick leave accrual and use. Calendar year to date sick leave use and accumulation balance shall appear on the employee's paycheck."

Item #2- Vacation

a. Analysis

The crux of the debate on this item appears to focus on the formula for determining vacation. The employees who are working over 8 hour shifts and are on a different day on and off rotation than other bargaining unit employees vacation is accrued at a greater rate than their counterparts.

County asserts that this was unintentional flaw in the original contract design and has been ongoing unbeknownst to them until this year. That as a result of a new computer software

system this dichotomy was realized.

Conversely, Union asserted that in fact there's no unintentional flaw. That this accelerated method of determining vacation was the result of the classification of employees that benefit from this system.

That the extra hours, added stress and the dangerous nature of the work require this accelerated rate of accrual.

It is not controverted that the formula in fact accelerates this benefit for those working over 8 hour shifts and are on different days on and off rotation than other bargaining unit employees.

This benefit accrual, like it's others appears on the employee pay stubs issued by the County.

b. Conclusion

The County asserts that the formula for Accrual of Vacation and it's implementation has been flawed since it's inception in the July 1, 1998 contract. No evidence was produced from those negotiations as to whether this discrepancy was the result of drafting err or intentional. In fact, it could be that both parties had completely different intentions.

The simple fact that there's discrimination between two groups is in and of itself insufficient to warrant modification.

c. Findings and Recommendations

Article II Vacation Section 11.01 Eligibility should remain as the current contract language.

Item #3-Health Insurance

The County seeks to modify the current contract language in this analysis. They propose that employees contribute \$5.00 per month for single coverage and \$12.50 per month for family coverage. These contributions would be deducted on a pre-tax basis.

Conversely, the Union has rejected the County's proposal and desires that current contract language continue.

Historically, health insurance coverage has been provided for the single as well as the family plan since the first contract executed by the parties. These benefits were provided at no

cost to employees prior to certification. Approximately two-thirds of the bargaining unit are benefitting from the family plan while the remainder of the unit enjoy a single plan.

Numerous transformations to health insurance have taken place thru the years. In 1983, pre-certification, County went to a self funded health care plan. In 2001, the specific stop-loss level was increased from 35, 000 to 50,000. On July 1, 2003, the coverage went from a Comprehensive Major plan Medical to a PPO structure. As of January 1, 2005, the annual deductible changed from a \$100 to a \$200 annual deductible and from a \$500 to a \$1,000 annual out of pocket maximum for family coverage.

Exhibit 6 reflects the rate increases since this unit was certified. Insurance cost even with the aforementioned modifications have resulted in a 236% increase or an average annual increase of 13.29%.

In relation to the comparable Counties cost, employee contribution and benefits were analyzed.

From a cost perspective, Johnson County has the lowest single premium cost and is within \$7.00 per month of having the lowest family premium expense. SEE; EXHIBIT #123.

Two of the comparable Counties, Linn and Black Hawk require employee contributions for single coverage. Scott, Dubuque and Clinton have no contribution by employees selecting single coverage. Conversely, 3 out of the 5 comparable counties require employee contribution by employees selecting family contribution. Along with Linn and Black Hawk Counties who require both single and family contributions, Scott requires a contribution for employees who select family coverage.

Exhibit 11 reveals that all the other employees in the County contribute to family coverage. Only the Secondary Roads and Administrative units employees pay nothing for single coverage. The others pay \$5.00 per month for single coverage.

The County asserts that it's final position is a mere fraction of the total cost for this benefit. That the contribution amount is less than the average in the comparability groups. That the pre-tax deduction for this expense would cost the employees of this unit less than 3/10 of one per cent of their average wage.

The Union chronicles this dispute which apparently commenced in 2002 when the County attempted to modify the language giving them sole discretion to change coverage and it's various parameters.

The Union asserts that no changes are warranted as the new deductibles have gone into effect January 1 of this year and until some track record is built up they hypothesize that future modifications may be unnecessary.

The Union also pointed out that the County borrows against this expense each year so that they can levy for this particular expense.

The Union also has advanced the contention that an "adverse selection process" will take affect by charging for these benefits.

That the County's proposal is not a cost-savings concept but rather a cost-shifting one.

d. Conclusions

Probably no item is in controversy over the past decade than this benefit.

Historically, this benefit was a throw away benefit. What I mean by this is that the cost was so minimal most employers provided the same without much hesitation.

Today, employers at least state wide if not nation wide have seen hyper inflationary rates to this benefit. Health Insurance rate increases over the last decade have been second to none.

The Union has asserted numerous theories outlined above as to why this benefit should not be changed.

I find the following to be controlling:

- a. History
- b. Comparison of comparables

The history as noted earlier reflects that this benefit has been negotiated and contained within every contract.

Cost Savings modifications have been made to reduce the costs to County. No cost shifting in terms of monthly contributions have ever been part of the contract.

The comparability of counties reflect that Johnson County has one of the lowest cost amongst it's counterparts.

The comparability of counties requiring contribution by it's employees is split.

Two out of five counties or 40% require contributions of it's members desiring single coverage. Conversely, three out of five counties or 60% require contributions by it's membership for family coverage.

I have issued awards requiring employees to contribute with a monthly stipend to health care expense. Once a sacred cow, has now if not been slaughtered has suffered severe loss of

weight. But as with all benefits, they should be bought and sold at the negotiation table. The fact-finder or arbitrator absent compelling reasons should not substitute themselves for the parties at the table.

In the specific instance however, no compelling rationale exists. The underline County's increases relative to the industry have been within the norm. This is evidenced by Johnson County paying one of the lowest rates for this benefit.

The financial benefit to the County based on their proposal is negligible. Requiring employees to contribute to the future increases in health care increases is enormous. Such a benefit even to family plans must unless circumstances warrant be left to the experts which both parties have placed at the bargaining table.

c. Fact Finding Recommendations

I hereby find that no change to the current contract as to Section 12.01 is warranted.

Item #4- Shift Differential

a. Analysis

Shift Differential is a concept by which one set of employees or more within a unit and category are compensated differently than their counterparts based on their employment hours.

After the 2003 fact finding and arbitration, Shift Differentials were woven into the fabric of the parties contract. Classification modifications were made to the 2004 contract.

An analysis of the comparable Counties Differentials are set forth in Exhibit 127. The costing between the Union's and County's proposals on these increases range from .6% and .1% respectively.

County asserts that the Union's proposal would warrant a 300% increase. That based on the unit's extremely attractive wage and benefit package a 5 cent increase is more than ample. That there have been no shortage of staff bidding for this particular shift hours. Nor does Johnson County have any shift differential for any of it's other units and staff members which work similar hourly shifts.

To my knowledge the Union's proposal urges the undersigned to review the comparable counties package in this area and that the disparity is that significant that it evidences their position.

b. Conclusion

By the undersigned's calculations a 26 cent average per hour for the comparable counties exists as to deputies, and dispatch a 19.5 cent per hour average exists. Others have an average 25 cent per hour.

With Johnson's County contract no differential of the various job classification exists. The average shift differential is 24.33 cent per hour.

c. Findings

It is therefore the undersigned finding that a shift differential increase of 14 cent is warranted and should be recommended.

Item#5- Wages

a. Analysis

The County seeks to increase wages pursuant to Article 13.02 to result by 2.5%.

Conversely, the Union's proposal is twofold, first a 5.0% increase to Article 13.02, wage compensation. Further, the Union desires to create a new subsection 12.07. This subsection would require that employees selecting singular coverage would receive a monthly stipend towards a tax sheltered annuity. This amount would be controlled by the amount paid by employees selecting family coverage insurance.

The County asserts in exhibit 22 that the consumer price index increase for 2004 of 2.73%. This exhibit was created by the Iowa Association of Counties. The Union disputes this information. Exhibit #23 reveals that with the proposed pay increase will maintain Johnson County's number one rating in most if not all categories.

The County further asserts that with increased insurance costs the total package increase as to wages and insurance compensation package exceeding 5%.

The County asserts that the comparability group only provided a 3.26% increase. Of course only three (3) of the five (5) groups have settled as of the date of this fact-finding. Exhibit 24 reveals that Clinton, Dubuque and Linn Counties have settled while Scott and Black Hawk have not. The County further identifies other units within the County's settlements as well as elected officials compensation increases provided for by the compensation board and implemented by the Board of Supervisors.

The County neglected to provide a summary as to annual increases this unit has enjoyed.

Exhibit 129 reveals annual raises as follows:

1999 3.25
2000 3.50
2001 4.00 (split 2% at 6 months)
2002 3.50
2003 4.00 (+65 cent for Control Center Operators)
2004 3.50 (split 1.75% at 6 months)
2005 3.50 (split 1.75% at 6 months)

=====
Average 3.6%

Union's exhibit 128 reveals that comparability groups increases average 3.15%. No analysis has been provided as to what historically the comparability groups average increases over the 7 years.

Union asserts that 5% matches what the Compensation Board has proposed for the Sheriff. That the financial position of the County warrants this type of an increase.

In regards to the second component of this issue, related to the tax free annuity, the County is strenuously opposed. No annuity has been provided in the past collective bargaining agreements. That this benefit also includes an administrative expense to the County. Further, that no comparability County provides this benefit.

b. Conclusions

It's apparent that historically this unit has enjoyed on average annual increases in excess of what this years comparable counties reflect.

Historically

County	Union
3.6	No Information

Comparability Counties

County	Union
3.15	3.26

Historically, health insurance increases have not been tied to pay increases. Historically, no annuity has been provided to employees receiving single plan coverage.

Comparability wise no annuity has been provided to employees.

c. Findings

It is the finding of the undersigned

1. 13.02 Wages

Change paragraph A to reflect a three and three seventy five per cent (3.375%) increase.

2. 1307 Annuity

No addition of a new subsection requiring an annuity of any nature.

VIII. Conclusion

After review of all evidence including exhibits and arguments presented the undersigned finds that insufficient evidence exist to modify sick leave accrual vacation matrix, health insurance and creation of an annuity. Changes from a fiscal year to calendar year for accounting are warranted and should be awarded. Lastly, a 14 cent increase to shift differential compensation and a 3.375% increase as to general wages is warranted and is hereby awarded.

Respectfully Submitted

Sandy Law Firm, P.C.

By 

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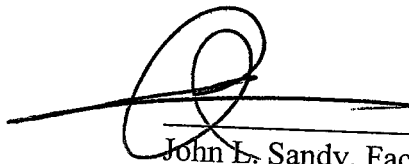
CERTIFICATE OF SERVICE

I certify that on the 7th day of February, 2005, I served the foregoing Award on Fact Finding upon each of the parties to this matter by (_____ personally delivering) (X Mailing) a copy to them at their respective addresses as shown below:

Judy Perkins
1321 Coll Drive
Iowa City, IA 52246-4111

Joe Rasmussen
P.O. Box 69
Alburnett, IA 52202

I further certify that on the 7th day of February, 2005, I will submit this Award for filing by (_____ personally delivering) (X Mailing) it to the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319.


John L. Sandy, Fact Finder